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No. 302
In the

Supreme Court of the United States

October Term, 1950

ARTHUR ST. JOHN, CHESTER WALCZAK, AL FUHRMAN, GORDON DONNELLY, EMIL HEIMSCH, THOMAS LANSING, JOHN F. SHEEHAN, E. F. REGNER, EDWARD P. REGAN, LA MOINE S. CARDINAL, Individually, and as officers of Local 18, United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organization, and LOCAL 18, UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, (CIO),

Appellants,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD, E. E. GOODING, J. E. FITZGIBBON and HENRY C. RULE, individually and as Commissioners constituting the Wisconsin Employment Relations Board, and THOMAS E. FAIRCHILD, individually and as Attorney General of the State of Wisconsin, and the MILWAUKEE GAS LIGHT COMPANY, a Wisconsin corporation,

Appellees.

BRIEF OF APPELLEES EXCEPTING MILWAUKEE GAS LIGHT COMPANY

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Appellants,

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WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, J. E. FITZGIBBON and HENRY C. RULE, individually and as Commissioners constituting the Wisconsin Employment Relations Board, and THOMAS E. FAIRCHILD, individually and as Attorney General of the State of Wisconsin, and the MILWAUKEE GAS LIGHT COMPANY, a Wisconsin corporation,

Appellees.

BRIEF OF APPELLEES EXCEPTING MILWAUKEE GAS LIGHT COMPANY

OPINION BELOW

The opinion of the District Court for the Eastern District of Wisconsin is reported in 90 Fed. Supp. 347, and may be found on page 91 of the original record, 59 of the printed record; dissenting opinion, page 99 of the original record and 67 of the printed record.

JURISDICTION

The judgment of the District Court was entered on June 14, 1950. The order of District Judge Robert E. Tehan allowing this appeal was entered August 8, 1950. The order of this court noting probable jurisdiction was entered on October 23, 1950. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 of the United States Code, Sections 1253 and 2281.

STATE STATUTES INVOLVED

The pertinent state statutes, sections 111.50 to 111.65, Subchapter III of Chapter 111 of the Wisconsin Statutes for 1949 known as the Public Utility Anti-Strike Law, Ch. 414, Laws of 1947, are printed in the Appendix; Wisconsin Statutes Section 269.56 provides for Declaratory Judgments. Subsections (1), (2), (11), (12) are printed in the Appendix.

FEDERAL STATUTES INVOLVED

The federal statute involved is the Labor-Management Relations Act, 1947.

QUESTIONS PRESENTED

Is a judgment dismissing a complaint on a general demurrer entered in a state court of competent jurisdiction and affirmed on appeal by the state supreme court, from which no appeal was taken to this court, *res judicata* in a new action between the same parties in federal court even though several additional facts are alleged to have occurred if these facts were viewed prospectively by the earlier state court judgment?

The second and third questions submitted by appellant, i.e., that subchapter III of Chapter 111 of the Wisconsin Statutes violates the 13th and 14th Amendments to the U. S. Constitution and is in conflict with Labor Management Relations Act of 1947 were not considered by court below and are not properly here for determination.

With respect to these issues, our contentions are set forth in respondents' brief in Case #329, set for argument immediately following this appeal; we hereby incorporate them herein by way of reference, and will undertake to provide counsel herein with sufficient copies thereof.

STATEMENT

We refer to the summary of the proceedings in the opinion below, 90 F. Supp. 348-349 (R. 59-62) and do not here reprint it.

SUMMARY OF ARGUMENT

All the factors necessary to, and requiring, the application of the doctrine of *res judicata* are present:

1. The cause of action and subject matter are the same.

2. The parties are the same.

It does not appear that the appellants take issue with the determination below that the same parties are here at bar as were before the state court. (See Questions Involved, p. 4, App. Brief.)

3. The state court had jurisdiction.

We contend the Declaratory Judgments Act, invoked by appellants in the State Court Action, led to and supported the judgment of the state circuit court, determining the rights of the parties.

Appellants contend the doctrine of *res judicata* is not applicable because the state court judgment was entered without considering that the employment relationship was subject to the Federal Act.

We submit that the state court did consider the issue and held against the appellants. The amended complaint of appellants in the state court Declaratory Judgment action, paragraph 22 (R. 27) is conclusive of this.

The state court judgment determined Subchapter III of Chapter 111 of the Wisconsin Statutes to be a valid and constitutional act, not in conflict with the Federal act, nor otherwise invalid (R. 29). The demurrer admitted the allegations of the complaint; the lower courts herein both concluded that the amended complaint of the union did raise the issue, and it was decided against the pleader (appellant).

ARGUMENT

I.

THE STATE COURT JUDGMENT IS *RES JUDICATA* AS TO ISSUES SOUGHT TO BE RAISED ON THIS APPEAL

It has regularly been held by the United States Supreme Court that a judgment of a state court of competent jurisdiction is *res judicata* and bars a subsequent action in a federal court where the parties and subject matter are the same.

A. The Causes of Action and the Subject Matter are the Same

(1) causes of action are the same

(2) the allegations in the two pleadings are substantially the same

(3) facts necessary to sustain the two actions are the same

(4) the questions essential to a determination in the two suits are the same

(5) issues in state court litigation identical to those in this federal court action

In the state court action the union claimed that subchapter III, chapter 111, Wisconsin Statutes, was unconstitutional because it violated sec. 10, Art. I, and the XIII and XIV Amendments to the Constitution of the United States. It so alleges in the present action.

In the state court action the union claimed that subchapter III, chapter 111, Wisconsin Statutes, was in conflict with the Labor-Management Relations Act of 1947 and the declared public policy of the United States. It so claims in this action.

The above claims were made with respect to the labor relations of the Milwaukee Gas Light Company. They are so made now.

The union in the prior state court action alleged that the Gas Company was engaged in operations affecting interstate commerce. It does so now.

Each of the above issues as to constitutionality is common to both the prior state court action and to this action. Each of the above issues was decided against the union in the state court action.

Appellants contend at pages 12-14 of their brief that the complaint before the district court in the case at bar necessarily is materially different from the complaint in the Declaratory Judgment Action. It is our position that the state courts considered prospectively the allegations of the complaint now stipulated at paragraphs 32, 33 and 34 of the stipulation herein and determined the issue adversely to the appellants and that the paragraphs of the stipulation do not present any material facts not considered by the state court judgments. Appellants accordingly have not shown how it is material, or that the court in the Declaratory Judgment case did not in effect consider the same contentions.

None of the facts which have occurred since the decision in the state court action can change in any way the issues of the constitutionality of subchapter III, chapter 111, Wisconsin Statutes, as between the parties.

A comparison of the amended complaints in the state court action and in the action at bar shows that the issues were the same except for the fact that after the adjudication of the state court action a strike actually occurred; that the board commenced an action in the Circuit Court for Milwaukee County, Wisconsin to enjoin the strike, and procured a temporary injunction against the strike; that the strike was subsequently terminated; and that the parties agreed on all the matters in dispute except for a pension plan; and that no impasse or stalemate had occurred in reference to that pension plan up to the time of the entry of judgment in this action.

These facts will appear upon an examination of (1) the amended complaint in the action at bar (R. 1), and (2) the second amended stipulation which was filed on December 16, 1949 (R. 34). A brief reference will be made to these sources.

It was stated in the amended complaint that the most recent of the contracts was entered into between the plaintiff union and the defendant company on September 24, 1948, which by its terms remained in full force and effect until June 1, 1949, and from year to year thereafter until terminated by written notice on or before April 1 of any year; that the plaintiff union terminated the agreement as of June 1, 1949 (R. 5, par. 22); that negotiations for a new contract continued up to October 4, 1949 (R. 6, pars. 25 and 26); and on October 4, 1949 the plaintiffs left the employment of the defendant company "individually, in concert, and in agreement with others, and commenced to peacefully picket the company premises" (R. 27, par. 27); that the board secured an injunction from the Circuit Court for Milwaukee County restraining the plaintiffs "from

leaving their place of employment in concert or in agreement with others, and from picketing or otherwise violating" the provisions of the statute (R. 6, par. 28); that on October 6, 1949, the plaintiff union and the defendant company agreed upon wages, hours and other conditions of employment, but had not agreed on the exact terms and conditions of the pension plan; and "that the defendant company threatens to invoke Section 111.55 and other provisions of Subchapter III, chapter 111, Wisconsin Statutes of 1947, to compel the plaintiffs to agree to a pension plan as may be determined by a board of arbitrators provided for in said statutes" (R. 7, par. 31).

These same matters are dealt with in the second stipulation on which the case was submitted to the court, from which it appears that the contract of September 24, 1948 is covered in paragraph 19 (R. 38), the negotiations in paragraph 23 (R. 39), the strike in paragraph 30 (R. 42), and the state court action to enjoin the strike, in which a temporary injunction was issued on October 5, 1949, in paragraph 31 (R. 42-43).

Then follow paragraphs 32, 33 and 34, which read as follows:

> "32. That each party stipulates for himself that he has no present knowledge that subchapter 3 of ch. 111, Wisconsin Statutes, is being violated by the plaintiffs, or the defendant company, at the date of this stipulation. Should such violation occur in the future, the attorney general would perform such duties as are imposed upon him by the Wisconsin Statutes if so required by the Wisconsin Employment Relations Board.
>
> "33. That on October 6, 1949, plaintiff union and the defendant company agreed upon wages, hours and

other conditions of employment but have not agreed on the exact terms and conditions of the pension plan for the employees of the defendant company for whom the plaintiff union is authorized to bargain. Disagreement on said pension plan was one of the principal issues in dispute on October 5 when the strike took place. If an impasse or stalemate should arise in negotiations between the company and the union with reference to a pension plan, the company will request the Wisconsin Employment Relations Board to perform its duties under subchapter 3, chapter 111, Wisconsin Statutes.

"34. If an impasse or stalemate is reached in said negotiations, the Wisconsin Employment Relations Board will take steps pursuant to subchapter 3, chapter 111, Wisconsin Statutes, to effect a settlement through conciliation or a determination through arbitration, as the case may be, and would take such steps as are authorized and as it would deem necessary to prevent or stop a violation of said subchapter by the defendant company or its employees, including plaintiffs" (R. 43-44).

It thus appears that the strike called on October 5, 1949 (second stipulation, pars. 30 and 33, R. 42, 43) was abandoned, and it does not appear that any impasse or stalemate arose in the negotiations with reference to a pension plan up to the time of the entry of judgment.

All of the issues in both the state court action and this action arose over one subject matter which is common to both actions—the claimed repugnancy of subchapter III, chapter 111, Wisconsin Statutes, to and in violation of the Federal Constitution and in conflict with the Labor-Management Relations Act of 1947 in the state court action, and since these are the same issues the union is seek-

ing to raise in this action, the causes of action in both actions must of necessity be identical. This is true even though some of the acts with which the statute deals and which were considered prospectively and in the abstract by the state court in the declaratory judgment action have now occurred.

See, *Baltimore S. & Co. v. Phillips*, (1927) 274 U. S. 316, 47 S. Ct. 600, 71 L. ed. 1069.

That the causes of action are identical in both actions is proved by the test most commonly stated in determining whether causes of action are identical so as to warrant application of the rule of res judicata.[1] The test is: Will the same evidence sustain both actions. If it will, then the causes of action are identical and the judgment in the first action is a bar. It is clear that whatever evidence would have sustained the state court action would also sustain this action, or whatever evidence would be sufficient to sustain this action would also have been sufficient to authorize a recovery in the prior state court action.

Other facts which tend to prove the identity of the causes of action in both actions are: (1) the grounds of the two actions are the same; (2) the allegations in the pleadings are substantially the same; (3) the facts essential to maintenance of the two actions are the same; (4) the questions essential to decision of the first controversy are the same as those in the second action.

Where the causes of action are identical the judgment in the first action is res judicata and conclusive not only

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[1] *Nickoll v. Racine Cloak & Suit Co.*, (1927) 194 Wis. 298, 216 N. W. 502, 50 C. J. S. §648.

as to all matters litigated and decided by it, but as to all relevant issues which could have been raised and litigated.

UNITED STATES

Heiser v. Woodruff, (1946) 327 U. S. 726, 66 S. Ct. 853, 90 L. ed. 970;

Bates v. Bodie, (1918) 245 U. S. 520, 38 S. Ct. 182, 62 L. ed. 444;

Troxell v. Delaware Lack. & West. R. R. Co., (1913) 227 U. S. 434, 33 S. Ct. 274, 57 L. ed. 586;

Cromwell v. County of Sac, (1876) 94 U. S. 351, 24 L. ed. 195.

WISCONSIN

Reinkey v. Wilkins, (1920) 172 Wis. 515, 179 N. W. 751;

Shepardson v. Cary, Executor, etc., (1871) 29 Wis. 34.

See also:

50 C. J. S. §§657, 900 (b).

Thus the union is barred from raising issues in this action which it could have raised in the state court action which involved the same cause of action based on the alleged violations by subchapter III, chapter 111, Wisconsin Statutes of the Federal Constitution and the alleged conflict between that statute and the Labor-Management Relations Act of 1947. Obviously since the statute is the same as the one involved in the prior state court action, no new grounds of its unconstitutionality can have since

arisen that were not available to the union at the time of the state action.

To repeat, since the causes of action in both actions were identical, the judgment in the prior state court action is res judicata and conclusive on the parties as to all issues that were litigated and as to all issues that might have been raised.

In *Chicot County Dist. v. Bank*, (1940) 308 U. S. 371, 60 S. Ct. 317, 84 L. ed. 329, the court said at page 378:

> "The remaining question is simply whether respondents, having failed to raise the question in the proceeding to which they were parties and in which they could have raised it had it finally determined, were privileged to remain quiet and raise it in a subsequent suit. Such a view is contrary to the well-settled principle that *res judicata* may be pleaded as a bar, not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, 'but also as respects any other available matter which might have been presented to that end.' *Grubb v. Public Utilities Comm'n, supra; Cromwell v. County of Sac, supra.*"

In *Jackson v. Irving Trust Co.*, (1941) 311 U. S. 494, 61 S. Ct. 326, 85 L. ed. 297, the court said at page 503:

> "By the provisions of that Act the jurisdiction of the District Court attached when the suit was brought upon the claim which the plaintiffs as non-enemy claimants set forth. However the issues were labeled the court was authorized to determine them. *Texas & Pacific Ry. Co. v. Gulf, C. & S. F. Ry. Co.*, 270 U. S. 266, 274; *Stoll v. Gottlieb, supra*, p. 171. And whether a particular issue was actually litigated is immaterial in view of the necessary conclusion that

there was full opportunity to litigate it and that it was adjudicated by the decree. *Cromwell v. County of Sac*, 94 U. S. 351, 352; *Grubb v. Public Utilities Commission*, 281 U. S. 470, 479; *Chicot County Drainage District v. Baxter State Bank, supra; Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381, 403. If the District Court had erred in dealing, or in failing to deal, with any issue thus involved, the remedy was by appeal and no appeal was taken."

In *Heiser v. Woodruff*, (1946) 327 U. S. 726, 66 S. Ct. 853, 90 L. ed. 970, 735-736, the court said:

"In general a judgment is *res judicata* not only as to all matters litigated and decided by it, but as to all relevant issues which could have been but were not raised and litigated in the suit. *Cromwell v. County of Sac, supra*, 352; *Grubb v. Public Utilities Comm'n, supra*, 479; *Chicot County Dist. v. Bank, supra*, 375. * * *"

In *Fishgold v. Sullivan Corp.*, (1946) 328 U. S. 275, 66 S. Ct. 1105, 90 L. ed. 1230, 282-283, the court said:

"* *. * This elementary principle has long been recognized. Black, The Law of Judgments (2d ed.), pp. 764, 821, 936. As stated in *Cromwell v. County of Sac*, 94 U. S. 351, 352, a prior judgment 'is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' And see *Rooker v. Fidelity Trust Co.*, 263 U. S. 413, 415; *Grubb v. Public Utilities Commission*, 281 U. S. 470, 479; *Stoll v. Gottlieb*, 305 U. S. 165; *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U. S. 371, 375, 378. * * *"

B. The Parties in State Court Action are same as those herein

(1) Plaintiffs in both cases are union and officers thereof who represent the membership

We refer to the opinion of the court below in the case at bar:

"We now focus our attention on the question whether the parties to the State court action were the same as the parties in the case at bar. Manifestly they are not identical. Certain individuals are named in the pleadings in the case at bar, both as plaintiffs and defendants, who were not thus named in the State court action. The union and Thomas Lansing, its then president, were plaintiffs in the State court action and they are also plaintiffs in the case at bar. The parties plaintiff are not changed because the amended complaint herein now names Arthur St. John, the current president of the union, and lists other officers of the union and members of its bargaining committee. Plaintiffs in both cases are the union and the officers thereof who represent the membership. We hold that the parties plaintiff are the same in both actions" (R. 64-65).

(2) Defendants are the same in both actions

Again, we refer to the opinion below:

"The Wisconsin Employment Relations Board and the Milwaukee Gas Light Company were named defendants in both actions. In addition, the three individuals who are the Wisconsin Employment Relations Board are named individually in the case at bar, as well as Thomas E. Fairchild, Attorney General of the

State of Wisconsin. However, the three members of the board are sued in the present action only as members of the board, and not in their capacity as private citizens. The Attorney General is sued only in his official capacity, that of attorney representing the Wisconsin Employment Relations Board. We hold that the parties defendant are the same in both actions" (R. 65).

C. The Adjudication of the State Court was Final

The decision of the Wisconsin Supreme Court affirming the judgment in the state court suit was rendered on July 12, 1949, and is reported under the following title:

United G., C. & C. Workers v. Wis. E. R. Board, (1949) 255 Wis. 154, 38 N. W. 2d 692.

Any doubt as to the finality of that decision, so far as the constitutionality of the statute is concerned, was removed by a decision in another case rendered on May 2, 1950, after the decision of the District Court in the case at bar, and before the findings were filed and the judgment entered.

Wisconsin E. R. Board v. Amalgamated Asso., (1950) 257 Wis. 43, 42 N. W. 2d 471.

In that case the court said at page 52:

"Since we have held in *United G., C. & C. Workers v. Wisconsin E. R. Board*, 255 Wis. 154, 38 N. W. (2d) 692, and do now hold the statute to be constitutional, the final contention of the defendants that the several sections thereof are not severable need not be determined."

The union herein, Local 18 and the Gas Company herein, were before the Wisconsin Supreme Court again, in October 1950, in connection with contempt proceedings arising out of a labor dispute. In its opinion the Wisconsin Supreme Court said:

> "The Union asserts that subch. III of ch. 111, Stats., conflicts with the Federal Labor Management Relations Act of 1947, and violates the state and federal constitutions.
>
> "The constitutionality of the public utility anti-strike law was questioned in a previous action in this court. *United G., C. & C. Workers v. Wis. E. R. Board,* (1949) 255 Wis. 154, 38 N. W. (2d) 692. The law has been held to be a proper legislative enactment."

It is well established by many decisions of the United States Supreme Court that where no appeal is taken from the judgment of a state court it is conclusive on federal courts even as to federal constitutional questions decided in the state action.

In *Angel v. Bullington*, (1947) 330 U. S. 183, 67 S. Ct. 657, 91 L. ed. 832, the plaintiff, Bullington, brought suit against the defendant for a deficiency judgment in the state courts of North Carolina and lost in the state supreme court on the grounds that a state statute prevented the state courts from entertaining a suit for a deficiency judgment, in spite of plaintiff's contention that the Federal Constitution precluded the state from closing the doors of its courts to him. Without appealing the state supreme court decision to the United States Supreme Court the plaintiff brought suit on the same claim and against the same defendant in a federal court. The case eventually wound up in the United States Supreme Court which in holding that

the judgment of the state supreme court was res judicata and barred the subsequent action in federal court, said:

> "* * * Bullington could have come here, not merely by the grace of this Court on certiorari, but on appeal * * *. Since it was open for Bullington to come here to seek reversal of the decision of the North Carolina Supreme Court shutting him out of the North Carolina courts and he chose not to do so, the decision of the North Carolina Supreme Court concluded an adjudication of a federal question even though it was not couched in those terms. For purposes of litigating the issues in controversy in the North Carolina action, the North Carolina Supreme Court was an intermediate tribunal. If a litigant chooses not to continue to assert his rights after an intermediate tribunal has decided against him, he has concluded his litigation as effectively as though he had proceeded through the highest tribunal available to him. * * * He forewent his right to have a higher court, this Court, enable him to win his chance by holding that he was right and that the North Carolina Supreme Court was wrong. He cannot begin all over again in an action involving the same issues before another forum in the same State." (91 L. ed. 836-837)

In *Grubb v. Public Utilities Commission of Ohio*, (1930) 281 U. S. 470, 50 S. Ct. 374, 74 L. ed. 972, the Bus Company brought suit against the commission in federal court on the grounds that an order of the commission was an attempted regulation of interstate commerce by a state agency contrary to the commerce clause of the Federal Constitution and denied to the Bus Company privileges and immunities guaranteed by the Fourteenth Amendment.

While suit was pending in federal court the Bus Company appealed the order to the state supreme court on the same grounds. The state court affirmed the order. No ef-

fort was made to have the state supreme court judgment reviewed by the United States Supreme Court. After the three months allotted for appeal had expired the commission set up the state court judgment as a bar to the suit in federal court. The federal court thereupon dismissed the suit on the grounds that the state supreme court judgment was res judicata and barred the Bus Company from further litigating the matter. The United States Supreme Court affirmed the decree of the lower federal court.

In *Mitchell v. First National Bank of Chicago,* (1901) 180 U. S. 471, 21 S. Ct. 418, 45 L. ed. 627, the United States Supreme Court held that a final judgment on the merits in the courts of a state is conclusive in the federal courts between the parties or their privies whether the question determined was one of federal, general, or local law.

It should be noted that it is the *judgment* of the state *circuit* court which has been pleaded as *res judicata* in the action at bar. On the appeal from the state circuit court judgment, the Wisconsin Supreme Court affirmed the circuit court judgment. In its opinion on the appeal the court said, at page 157 of 255 Wis.:

> "We have no findings of fact before us, but upon the filing of a demurrer all of the well-pleaded facts are accepted as true for the purpose of the disposition of this controversy."

At page 158 of 255 Wis., the court said:

> "Therefore, upon this record, we can only determine whether or not ch. 414, Laws of 1947, is a valid and constitutional enactment. * * *"

In a later case, *Wisconsin E. R. Board v. Amalgamated Asso.,* (1950) 257 Wis. 43, 42 N. W. 2d 471, the court reit-

erated its holding of constitutionality and in a still later case, *Wisconsin E. R. Board v. Milwaukee Gas Light Co.*, (1950) 258 Wis. 1, the court said:

> "The constitutionality of the public utility anti-strike law was questioned in a previous action in this court. *United G., C. & C. Workers v. Wis. E. R. Board* (1949), 255 Wis. 154, 38 N. W. (2d) 692. The law has been held to be a proper legislative enactment."

Before the three judge court below, in the case at bar, it was contended that all of the issues were not squarely met in the opinion of the Wisconsin Supreme Court on the appeal there in the former action. In its decision, the court below, in the case at bar said with respect to this contention:

> "It is true that the opinion of the Wisconsin Supreme Court contains some equivocal language which furnishes some foundation for the contention of plaintiffs herein that all of the issues were not squarely met. Nevertheless it is the action which the Supreme Court took which is important rather than any reasons which it might give for such action. The appeal was from the judgment of the Circuit Court. Included in the issues squarely raised were the claimed repugnancy of subchapter 3 of Chap. 111 to the federal Constitution and to the Labor-Management Relations Act of 1947. The Wisconsin Supreme Court was empowered to reverse, affirm or modify the Circuit Court judgment; it did not reverse or modify, but affirmed the judgment without any condition or qualification. The mandate of the Wisconsin Supreme Court did not affirm an order sustaining a demurrer, but rather it affirmed the judgment of the Circuit Court of Milwaukee County in that case. * * *"

It is settled law in Wisconsin that the judgment of the state supreme court affirming that of the court below is conclusive upon the rights of the parties, and covers every ground of objection thereto, though the court below may have considered one ground and the supreme court another. *Ean v. The Chicago, Milwaukee & St. Paul R. Co.*, (1898) 101 Wis. 166, 76 N. W. 329. The judgment of the trial court when affirmed by the supreme court becomes in legal effect the judgment of the supreme court. *Hoan v. Journal Co.*, (1942) 241 Wis. 483, 6 N. W. 2d 185.

D. The State Court had Jurisdiction of Subject matter and Parties

The only questions concerning a prior state court judgment which are open in a subsequent action in federal court involving the same parties and issues are those of the jurisdiction of the state court over the parties and the subject matter and the one asserting the lack of such jurisdiction has the burden of proving such lack.[1]

There can be no question that the Milwaukee County Circuit Court and Wisconsin Supreme Court had jurisdiction over the parties and issues in the prior state action. The parties to the previous action are all residents of the State of Wisconsin and service was had on each of them. The subject matter of the action, though it involved federal as well as state questions, was also within the jurisdiction of the state courts, which are competent to pass on federal questions.

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[1] 50 C. J. S. §900 (d).

The plaintiffs in that action (herein the appellants) voluntarily submitted to the jurisdiction of the state court by electing to pursue their remedy there.

E. No Valid Distinction Between the Actions Can be Drawn even if Different Relief is Prayed

The amended complaint in the action at bar opens with this statement:

"1. This is a suit of a Civil nature seeking an injunction *and a declaratory judgment*, and arises under the Constitution of and the laws of the United States." (Amended Complaint, paragraph 1, R. 1.)

The injunction sought is a permanent injunction enjoining and restraining the enforcement of Subchapter III of Chapter 111, Wisconsin Statutes of 1947, sometimes referred to as the Public Utility Anti-Strike Law. (Paragraph (d) of the prayer of Amended Complaint, R. 12.)

The declaratory judgment sought is one declaring the act invalid. (Paragraph (e) of the prayer of Amended Complaint, R. 12-13.)

The fact that in the present action the union seeks injunctive relief in addition to a declaratory judgment fixing the rights and status of the parties in no way affects the conclusiveness of the prior state court judgment.

> "* * * If the causes of action are substantially the same, a difference in the relief sought will not prevent the judgment in the state court from operating as an estoppel in the federal court. * * *" (50 C. J. S. §900 (a))

And in 30 Am. Jur., Judgments, §176, it is said:

"* * * On the other hand, the fact that a different form or measure of relief is asked does not preclude the application of the judgment to estop the maintenance of the second action."

II.

THE ADJUDICATION OF THE STATE COURT WAS ON THE MERITS

A. The Merits of a Claim are Disposed of when it is Refused Enforcement

The contention of the appellants at page 7 of their brief is: that they, in effect, never had a cause of action so that Wisconsin judgment in Declaratory Judgment action can not be res judicata. This is, we submit, contrary to the language of the Declaratory Judgment Act, Sec. 269.56, Wis. Stats. The contention is not supported by the decision in *United G., C. & C. Workers v. Wis. E. R. Board,* (1949) 255 Wis. 154, 38 N. W. 2d 692; since plaintiff was proceeding in good faith, and while believing it had a cause of action, in good faith, it put its claim forward. The declaration by the court was negative. Sec. 269.56, Wis. Stats.

In *Miller v. Currie,* (1932) 208 Wis. 199, 203, 242 N. W. 570 by Chief Justice Rosenberry, the court said:

"* * * By the very words of the statute the discretion given to the court is not a discretion to entertain the action but to enter or decline to enter the judgment or decree. * * *"

Appellants contend at page 8 of their brief that the Wisconsin court construed the Declaratory Relief Act differently in an earlier case.

If the court construed the statute (sec. 269.56, Wis. Stats.) in *Heller v. Shapiro,* (1932) 208 Wis. 310, 242 N. W. 174 as contended for by appellant here, then the brief answer is that it was not so construed (sec. 269.56, Wis. Stats.) in *United G., C. & C. Workers v. Wis. E. R. Board,* (1949) 255 Wis. 154, 38 N. W. 2d 692. This is clear from the language of the Wisconsin Supreme Court in *Wisconsin E. R. Board v. Amalgamated Asso.,* (1950) 257 Wis. 43, 52, 42 N. W. 2d 471 where the court said:

> "Since we have held in *United G., C. & C. Workers v. Wisconsin E. R. Board,* 255 Wis. 154, 38 N. W. (2d) 692, and do now hold the statute to be constitutional, * * *."

We refer to the opinion below in the case at bar:

> "Plaintiffs' argument that all of the merits of the controversy were not passed upon is conclusively answered in *Angel v. Bullington, supra,* where the controlling opinion holds: (p. 190)
>
> " 'It is suggested that the North Carolina Supreme Court did not adjudicate the "merits" of the controversy. It is a misconception of *res judicata* to assume that the doctrine does not come into operation if a court has not passed on the "merits" in the sense of the ultimate substantive issues of a litigation. An adjudication declining to reach such ultimate substantive issues may bar a second attempt to reach them in another court of the States. . . .
>
> " 'The "merits" of a claim are disposed of when it is refused enforcement. If an asserted federal claim

is denied enforcement on a professed local ground, but a so-called local ground which is subject to review here because it is in fact the adjudication of a federal question, then the "merits" of that claim were adjudicated in the only sense that adjudication of the "merits" is relevant to the principles of *res judicata*. . . .'" (R. 64)

B. No Valid Distinction can be Drawn between a Judgment entered Sustaining a Demurrer to a Complaint and a Judgment entered after a Trial upon Presentation of Evidence

Appellants contend, at page 9, of their brief, that because, in another action, the Supreme Court reversed, that it should have reversed in its state court action.

In the companion case, also asking for Declaratory Relief, *Amalgamated Assoc., etc. v. Milwaukee E. R. & T. Co.* (1949) 255 Wis. 163, 38 N. W. 2d 697, the circuit court had erroneously proceeded to judgment, instead of dismissal after overruling plaintiffs' demurrer to answer. Although we are not here concerned with the correctness of the judgment in the companion case, in that case the complainant declined to proceed with the proof, so its complaint was ordered dismissed.

Appellants rely on the case of *Chas. H. Stehling Co. v. Milcor Steel Co.*, 242 Wis. 629, 9 N. W. 7d 78. This decision, referred to by appellant, is inapplicable because there the demurrer was not to the amended complaint as here, in the case at bar.

Appellants contend, at page 11 of their brief, that the decision in *United States F. & G. Co. v. Pullen*, (1939) 230 Wis. 137, is not applicable since no claim is made that

a second and subsequent demurrer in the same law suit is not properly considered by a court.

The judgment was no less one upon the merits because it was entered upon general demurrer than it would have been if it had been entered after trial. The only difference between a judgment upon demurrer and one after trial is that upon demurrer the facts pleaded are admitted instead of proven. In arriving at its judgment, the court considers all the facts pleaded by the plaintiff and could have no other facts before it had the issues gone to trial.

In *Ean v. The Chicago, Milwaukee & St. Paul R. Co.*, (1898) 101 Wis. 166, 170-171, 76 N. W. 329 it was stated that the judgment entered by the trial court is upon affirmation "in legal effect, the judgment of this court." The effect of the Supreme Court affirmance was there stated to render the judgment *res judicata* as to all matters upon which the trial court passed as well as on those discussed by the Supreme Court. The court said:

> "* * * It may be stated as elementary that the judgment is conclusive upon every matter upon which the court did actually pass, or upon which it might have passed, in making its decision. The objection to the complaint was that it did not state a cause of action. That covered every ground that could be urged against it, and the decision thereon is conclusive, although the court below may have considered one ground and this court another."

It is possible that a demurrer on limited grounds such as defect of parties might not give rise to the defense of *res judicata*; but a general demurrer on the basis of the objection that the complaint does not state a cause of action admits all factual allegations and raises all the issues that

could be raised in a trial. That is the law of Wisconsin as was laid down in the case of *Ean v. Chicago, Milwaukee & St. Paul R. Co.*, (1898) 101 Wis. 166, 76 N. W. 329, above quoted, in which the judgment pleaded as *res judicata* was entered upon a demurrer *ore tenus*.

Appellants contend, at pages 14-17 of their brief, the doctrine of res judicata is not applicable because the state court judgment was entered without considering that the employment relationship was subject to the Federal Act.

We submit that the state court did consider the issue and held against the appellants. The amended complaint of appellant in the state court Declaratory Judgment Action, paragraph 22 (R. 27) recites:

> "That the said defendant company, and its employees, are subject to and affected by the National Labor Relations Act as Amended on June 23rd, 1947, by the Congress of the United States, otherwise known as the Labor Management Relations Act of 1947."

The state court judgment determined that Subchapter III of Chapter 111 of the Wisconsin Statutes to be a valid and constitutional act, not in conflict with the Federal Act, not otherwise invalid (R. 29).

The demurrer admitted the allegations of the complaint; the lower courts herein both concluded that the amended complaint of the union did raise the issue, and it was decided against the pleader.

We quote from the decision of the state trial court (R. 51):

> "Plaintiffs contend:
>
> "1. That Chap. 414, Laws of 1947, violates the 'due process of law' and the 'equal protection of the laws'

provisions of the XIV Amendment to the Constitution of the United States.

"2. That it likewise violates the 13th Amendment in that it imposes 'involuntary servitude' upon the plaintiffs.

"3. That it impairs the obligations of contract, contrary to Sec. 10, of Article I.

"4. That it constitutes an unlawful delegation of legislation, executive and judicial powers, contrary to the constitution of Wisconsin.

"5. That it violates Article VII, Section 16, Wisconsin Constitution 'in that it establishes a tribunal of conciliation with the power to render binding judgment on the parties without the agreement of both parties.'

"6. That it is violative of Article XIII, Sec. 9, Wisconsin Constitution, 'relating to the way and method of appointment of officers of the state'.

"7. That the law is in conflict with the National Labor Relations Act, as presently amended (known as the Taft-Hartley Act)" (R. 51).

It is well established by decisions of the United States Supreme Court that a judgment sustaining a demurrer to a complaint on the ground that it does not state facts sufficient to constitute a cause of action *is an adjudication upon the merits* and may be pleaded in bar of another suit on the same facts. The judgment is conclusive not only of the matters actually adjudicated but also of any others which could have been determined at that time.

In *Northern P. R. v. Slaght*, (1907) 205 U. S. 122, 130, 27 S. Ct. 442, 51 L. ed. 738, the court said:

"* * * It is well established that a judgment on demurrer is as conclusive as one rendered upon proof. *Gould v. Evansville & Crawfordsville R. R. Co.*, 91 U. S. 526; *Bissel v. Spring Valley Township*, 124 U. S. 228; Freeman on Judgments, section 267. * * *"

See, also:

Bissell v. Spring Valley Township, (1888) 124 U. S. 225, 8 S. Ct. 495, 31 L. ed. 411;

Gould v. Evansville and Crawfordsville R. R. Co., (1875) 91 U. S. 526, 23 L. ed. 416;

Aurora City v. West, (1868) 74 U. S. 82, 7 Wall. 82, 19 L. ed. 42;

Ellis v. The Northern Pacific R. Co., (1891) 80 Wis. 459, 50 N. W. 397;

Lewko v. Chas. A. Krause Milling Co., (1935) 219 Wis. 6, 261 N. W. 672.

In *Riehle v. Margolies*, (1929) 279 U. S. 218, 225, 49 S. Ct. 310, 73 L. ed. 669, the court said:

"* * * A judgment of a court having jurisdiction of the parties and of the subject-matter operates as *res judicata*, in the absence of fraud or collusion, even if obtained upon a default. * * *"

C. No Valid Distinction can be Drawn between the Bar Arising after Final Judgment for Declaratory Relief and the Bar Arising after a Judgment Otherwise

The matter sought to be adjudicated here, as in the state court action, was the alleged repugnancy of the state act to the federal act. The uncertainty is claimed by appellants in their amended complaint below, at paragraph 37 (R. 9),

> "The laws of Wisconsin are in direct conflict with the Labor Management Relations Act, 1947."

The alleged repugnancy was ripe for determination under the Declaratory Judgment Act (R-Ap. 43-44), under the pleadings, and under the Wisconsin rule, that only where the alleged uncertainty could not be terminated or the controversy settled would no declaration be entered. *New Amsterdam Casualty Co. v. Simpson*, (1941) 238 Wis. 550, 300 N. W. 367.

III.

A JUDGMENT IN AN ACTION IS CONCLUSIVE ON ALL NAMED PARTIES AND ALL THOSE IN PRIVITY WITH THEM

Local 18 of the United, Gas, Coke and Chemical Workers of America and Thomas Lansing (appellants here) were parties plaintiff in the action before the Wisconsin court, and the Milwaukee Gas Light Company and Wisconsin Employment Relations Board (appellees here) were parties defendant. The other individual parties plaintiff named in the instant action are joined as officers of Local

18. Individuals named as parties defendant in the instant action are the members of the Wisconsin Employment Relations Board and the Board's counsel, who are joined in their official capacity. The officers of an association are parties privy to an action by the association, and public officials are parties privy to an action against the body which they represent. The rule of *res judicata* covers not only the parties to the action but all those privy to them, and all those represented by them. See 30 Am. Jur. 962 where it is said:

> "* * * While the general rule is that no person is bound by a judgment except those who are parties or stand in privity with others who are parties, there is an exception to the rule, of equal authority with the rule itself, in the case of persons who are virtually represented by persons on the record as parties. In such case, a judgment in favor of the parties representing the general class is operative under the doctrine of res judicata in favor of all who are thus represented, and a judgment against the parties representing the general class is operative against those represented. This doctrine does not depend upon statutory provisions; it is a rule of common law, founded on convenience and necessity. It is based upon the theory that the persons joined and not joined have a common interest, that the parties joined may be depended upon to bring forward the entire merits of the controversy as a protection to their own interests, and that the persons not joined as parties are sufficiently represented by those who are joined. * * *"

In *Warner v. Trow*, (1874) 36 Wis. 195, 200, the Supreme Court said:

> "* * * In order to give full effect to the rule that the judgment of a course of competent jurisdiction is

final and conclusive upon the rights of the parties touching the subject matter of the suit, not only the parties themselves are held to be bound, but also all persons who are represented by the parties, and claim under them, or in privity with them, must be equally concluded by it. * * *"

Sec. 260.12 of the Wisconsin Statutes for 1949 provides:

"Parties united in interest to be joined; class actions; alternative joinder. Of the parties to the action those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should be joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole. And when more than one person makes a separate claim for damage against the same person or persons based upon the same alleged negligence, they may unite in prosecuting their claims in one action."

In the case of *Grand Int. Brotherhood of L. Engineers v. Mills*, (1934) 43 Ariz. 379, 411, 31 P. 2d 971 it was held:

"* * * In the case of *Supreme Tribe of Ben-Hur v. Cauble*, 255 U. S. 356, 41 Sup. Ct. 338, 341, 65 L. Ed. 673, decided after the change in the rules, the court called particular attention to this fact, and held that a class suit would bind all persons of the class, even though they were not actually represented in the suit.

We quote from that case as follows:

" 'Class suits have long been recognized in federal jurisprudence. In the leading case of *Smith v. Sworm-*

stedt, 16 How. (U. S.) 288, 303, 14 L. Ed. 942, 948, of such suits this court said:

"'"Where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise, that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject-matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and mained."'"

In *Hromek v. Freie Gemeinde*, (1941) 238 Wis. 204, 209, 298 N. W. 587, the court said:

"* * * The interpleaded union is an unincorporated association having a membership of five thousand. It has no entity or existence apart from that of its members, although for convenience it is permitted that the group comprising the union be sued in the name adopted by the association. This is a procedural provision and does not in any way change the status of the group or its substantive liabilities. *United Mine Workers v. Coronado Coal Co.* 259 U. S. 344, 42 Sup. Ct. 570, 66 L. Ed. 975, 27 A. L. R. 762; *Taff Vale Case* (1901), A. C. 426, 70 L. J. K. B. 905. * * *"

CONCLUSION

It is respectfully contended that the judgment of the court below should be affirmed.

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APPENDIX

SUBCHAPTER III

Public Utilities

(Enacted in 1947, amended in 1949)

111.50 DECLARATION OF POLICY. It is hereby declared to be the public policy of this state that it is necessary and essential in the public interest to facilitate the prompt, peaceful and just settlement of labor disputes between public utility employers and their employes which cause or threaten to cause an interruption in the supply of an essential public utility service to the citizens of this state and to that end to encourage the making and maintaining of agreements concerning wages, hours and other conditions of employment through collective bargaining between public utility employers and their employes, and to provide settlement procedures for labor disputes between public utility employers and their employes in cases where the collective bargaining process has reached an impasse and stalemate and as a result thereof the parties are unable to effect such settlement and which labor disputes, if not settled, are likely to cause interruption of the supply of an essential public utility service. The interruption of public utility service results in damage and injury to the public wholly apart from the effect upon the parties immediately concerned and creates an emergency justifying action which adequately protects the general welfare.

111.51 DEFINITIONS. When used in this subchapter:

(1) "Public utility employer" means any employer (other than the state or any political subdivision thereof) engaged in the business of furnishing water, light, heat, gas, electric power, public passenger transportation or communication, or any one or more of them, to the public in this state; and shall be deemed to include a rural elec-

trification co-operative association engaged in the business of furnishing any one or more of such services or utilities to its members in this state. Nothing in this subsection shall be interpreted or construed to mean that rural electrification co-operative associations are hereby brought under or made subject to chapter 196 or other laws creating governing or controlling public utilities, it being the intent of the legislature to specifically exclude rural electrification co-operative associations from the provisions of such laws. This subchapter does not apply to railroads nor railroad employes.

(2) "Essential service" means furnishing water, light, heat, gas electric power, public passenger transportation or communication, or any one or more of them, to the public in this state.

(3) "Collective bargaining" means collective bargaining of or similar to the kind provided for by subchapter I of this chapter.

(4) "Board" means the Wisconsin employment relations board.

(5) "Arbitrators" refers to the arbitrators provided for in this subchapter.

111.52 SETTLEMENT OF LABOR DISPUTES THROUGH COLLECTIVE BARGAINING AND ARBITRATION. It shall be the duty of public utility employers and their employes in public utility operations to exert every reasonable effort to settle labor disputes by the making of agreements through collective bargaining between the parties, and by maintaining the agreements when made, and to prevent, if possible, the collective bargaining process from reaching a state of impasse and stalemate.

111.53 APPOINTMENT OF CONCILIATORS AND ARBITRATORS. Within 30 days after this subchapter becomes effective, the board shall appoint a panel of persons to serve as conciliators or arbitrators under the provisions of this subchapter.

No person shall serve as a conciliator and arbitrator in the same dispute. Each person appointed to said panels shall be a resident of this state, possessing in the judgment of the board, the requisite experience and judgment to qualify such person capably and fairly to deal with labor dispute problems. All such appointments shall be made without a consideration of the political affiliations of the appointee. Each appointee shall take an oath to perform honestly and to the best of his ability the duties of conciliator or arbitrator, as the case may be. Any appointee may be removed by the board at any time or may resign his position at any time by notice in writing to the board. Any vacancy in the panels shall be filled by the board within 30 days after such vacancy occurs. Such conciliators and arbitrators shall be paid reasonable compensation for services and for necessary expenses, in an amount to be fixed by the board, such compensation and expenses to be paid out of the appropriation made to the board by section 20.585 upon such authorizations as the board may prescribe.

111.54 CONCILIATION. If in any case of a labor dispute between a public utility employer and its employes, the collective bargaining process reaches an impasse and stalemate, with the result that the employer and the employes are unable to effect a settlement thereof, then either party to the dispute may petition the board to appoint a conciliator from the panel, provided for by section 111.53. Upon the filing of such petition, the board shall consider the same, and if in its opinion, the collective bargaining process, notwithstanding good faith efforts on the part of both sides to such dispute, has reached an impasse and stalemate and such dispute, if not settled, will cause or is likely to cause the interruption of an essential service, the board shall appoint a conciliator from the panel to attempt to effect the settlement of such dispute. The conciliator so named shall expeditiously meet with the disputing parties and shall exert every reasonable effort to effect a prompt settlement of the dispute.

111.55 CONCILIATOR UNABLE TO EFFECT SETTLEMENT; APPOINTMENT OF ARBITRATORS. If the conciliator so named is unable to effect a settlement, of such dispute within a 15-day period after his appointment, he shall report such fact to the board; and the board, if it believes that a continuation of the dispute will cause or is likely to cause the interruption of an essential service, shall submit to the parties the names of either 3 or 5 persons from the panel provided for in section 111.53. Each party shall alternately strike one name from such list of persons. The person or persons left on the list shall be appointed by the board as the arbitrator (or arbitrators) to hear and determine such dispute.

111.56 STATUS QUO TO BE MAINTAINED. During the pendency of proceedings under this subchapter existing wages, hours, and conditions of employment shall not be changed by action, of either party without the consent of the other.

111.57 ARBITRATOR TO HOLD HEARINGS. (1) The arbitrator shall promptly hold hearings and shall have the power to administer oaths and compel the attendance of witnesses and the furnishing by the parties of such information as may be necessary to a determination of the issue or issues in disputes. Both parties to the dispute shall have the opportunity to be present at the hearing, both personally and by counsel, and to present such oral and documentary evidence as the arbitrator shall deem relevant to the issue or issues in controversy.

(2) It shall be the duty of the arbitrator to make written findings of fact, and to promulgate a written decision and order, upon the issue or issues presented in each case. In making such findings the arbitrator shall consider only the evidence in the record. When a valid contract is in effect defining the rights, duties and liabilities of the parties with respect to any matter in dispute, the arbitrators shall have power only to determine the proper inter-

pretation and application of contract provisions which are involved.

(3) Where there is no contract between the parties, or where there is a contract but the parties have begun negotiations looking to a new contract or amendment of the existing contract, and wage rates or other conditions of employment under the proposed new or amended contract are in dispute, the factors, among others, to be given weight by the arbitrator in arriving at decision, shall include:

(a) Comparison of wage rates or other conditions of employment of the utility in question with prevailing wage rates or other conditions of employment in the local operating area involved;

(b) Comparison of wage rates or other working conditions with wage rates or other working conditions maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions in the local operating area involved;

(c) The value of the service to the consumer in the local operating area involved;

(d) Where a public utility employer has more than one plant or office and some or all of such plurality of plants or offices are found by the arbitrators to be located in separate areas with different characteristics, consideration shall be given to the establishment of separate wage rates or schedule of wage rates and separate conditions of employment for plants and offices in different areas;

(e) The overall compensation presently received by the employes having regard not only to wages for time actually worked but also to wages for time not worked, including (without limiting the generality of the foregoing) vacation, holidays, and other excused time, and all benefits received, including insurance and pensions, medical and hospitalization benefits and the continuity and stability of employment enjoyed by the employes. The foregoing enumeration of factors shall not be construed as precluding the arbitrator from taking into consideration other fac-

tors not confined to the local labor market area which are normally or traditionally taken into consideration in the determination of wages, hours and working conditions through voluntary collective bargaining or arbitration between the parties.

111.58 STANDARDS FOR ARBITRATION. The arbitrator shall not make any award which would infringe upon the right of the employer to manage his business or which would interfere with the internal affairs of the union.

111.59 FILING OF ORDER WITH CLERK OF CIRCUIT COURT; PERIOD EFFECTIVE; RETROACTIVITY. The arbitrator shall hand down his findings, decision and order (hereinafter referred to as the order) within 30 days after his appointment; except that the parties may agree to extend, or the board may for good cause extend the period for not to exceed an additional 30 days. If the arbitrators do not agree, then the decision of the majority shall constitute the order in the case. The arbitrator shall furnish to each of the parties and to the public service commission a copy of the order. A certified copy thereof shall be filed in the office of the clerk of the circuit court of the county wherein the dispute arose or where the majority of the employes involved in the dispute reside. Unless such order is reversed upon a petition for review filed pursuant to the provisions of section 111.60, such order, together with such agreements as the parties may themselves have reached, shall become binding upon, and shall control the relationship between the parties from the date such order is filed with the clerk of the circuit court, as aforesaid, and shall continue effective for one year from that date, but such order may be changed by mutual consent or agreement of the parties. No order of the arbitrators relating to wages or rates of pay shall be retroactive to a date before the date of the termination of any contract which may have existed between the parties, or, if there was no such contract, to a date before the day on which the demands involved in the dispute were pre-

sented to the other party. The question whether or not new contract provisions or amendments to an existing contract are retroactive to the terminating date of a present contract, amendments or part thereof, shall be matter for collective bargaining or decision by the arbitrator.

111.60 JUDICIAL REVIEW OF ORDER OF ARBITRATOR. Either party to the dispute may within 15 days from the date such order is filed with the clerk of the court, petition the court for a review of such order on the ground (1) that the parties were not given reasonable opportunity to be heard, or (2) that the arbitrator exceeded his powers, or (3) that the order is not supported by the evidence, or (4) that the order was procured by fraud, collusion, or other unlawful means. A summons to the other party to the dispute shall be issued as provided by law in other civil cases; and either party shall have the same rights to a change of venue from the county, or to a change of judge, as provided by law in other civil cases. The judge of the circuit court shall review the order solely upon the grounds for review herein above set forth and shall affirm, reverse, modify or remand such order to the arbitrator as to any issue or issues for such further action as the circumstances require.

111.61 BOARD TO ESTABLISH RULES. The board shall establish appropriate rules and regulations to govern the conduct of conciliation and arbitration proceedings under this sub-chapter.

111.62 STRIKES, WORK STOPPAGES, SLOWDOWNS, LOCKOUTS, UNLAWFUL; PENALTY. It shall be unlawful for any group of employes of a public utility employer acting in concert to call a strike or to go out on strike, or to cause any work stoppage or slowdown which would cause an interruption of an essential service; it also shall be unlawful for any public utility employer to lock out his employes when such action would cause an interruption of essential service; and it shall be unlawful for any person or persons to instigate, to induce, to conspire with, or to encourage

any other person or persons to engage in any strike or lockout or slowdown or work stoppage which would cause an interruption of an essential service. Any violation of this section by any member of a group of employes acting in concert or by any employer or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor.

111.63 ENFORCEMENT. The board shall have the responsibility for enforcement of compliance with the provisions of this subchapter and to that end may file an action in the circuit court of the county in which any such violation occurs to restrain and enjoin such violation and to compel the performance of the duties imposed by this subchapter. In any such action the provisions of sections 103.51 to 103.63 shall not apply.

111.64 CONSTRUCTION. (a) Nothing in this subchapter shall be construed to require any individual employe to render labor or service without his consent, or to make illegal the quitting of his labor or service or the withdrawal from his place of employment unless done in concert or agreement with others. No court shall have power to issue any process to compel an individual employe to render labor or service or to remain at his place of employment without his consent. It is the intent of this subchapter only to forbid employes of a public utility employer to engage in a strike or to engage in a work slowdown or stoppage in concert, and to forbid a public utility employer to lock out his employes, where such acts would cause an interruption of essential service.

(b) All laws and part of laws in conflict herewith are to the extent of such conflict concerning the subject matter dealt with in this subchapter, supplanted by the provisions of this subchapter.

111.65 SEPARABILITY. It is hereby declared to be the legislative intent that if any provision of this subchapter,

or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Effective Date: July 26, 1947.

269.56 DECLARATORY JUDGMENTS ACT. (1) Scope. Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

(2) Power to construe, etc. Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statue, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration or rights, status or other legal relations thereunder.

* * *

(11) Parties. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the right of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney-general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

(12) Construction. This section is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.